IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 2ND NOVEMBER 2007 / 11TH KARTHIKA 1929

Bail Appl..No. 6534 of 2007()

CRIME NO.1570/07 OF THE PERUMBAVOOR POLICE STATION.

PETITIONERS: ACCUSED 1 & 2:

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1. BEN SAMUAL, S/O.K.O.SAMUAL,
KARAKKATTU HOUSE, HILL PALACE,
THRIPOONITHURA.

2. ABI MATHEW, S/O.MATHAI,
AIKKARAKUDIYIL HOUSE,
ARACKAPPADY, VENGOLA.

BY ADV. SRI.SAIBY JOSE KIDANGOOR

RESPONDENTS: COMPLAINANT & STATE:

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1. STATE OF KERALA REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

2. SUB INSPECTOR OF POLICE,
PERUMBAVOOR POLICE STATION.

BY PUBLIC PROSECUTOR SRI. S.U. NAZAR.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 02/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No. 6534 OF 2007

Dated this the 2nd day of November, 2007

ORDER

Application for anticipatory bail. The petitioners are accused 1 and 2. Altogether, there are 3 accused persons. The petitioners are the Managing Partner and Parter of a partnership establishment. The crux of the allegations against the petitioners is that the `C' Form of the de facto complainant was forged to make it appear that the 3rd accused had sold certain articles to the de facto complainant. The 3rd accused happened to send the `C' Form mistakenly to the de facto complainant and that is how the de facto complainant came to know of the alleged forgery. The de facto complainant attempted to contact the 3rd accused in Tamil Nadu over the telephone. According to the 3rd accused, the article was sold in the name of the de facto complainant. The cover which was

delivered by the courier had on it a land line number and mobile phone number. The de facto complainant contacted those numbers and the de facto complainant was told that the cover had been sent by mistake to him and a person will be sent to collect the same. When the person came to collect the same, he was stopped. He was questioned. Details of the petitioners were thus obtained. The telephone numbers shown belong to the petitioners. According to the de facto complainant, though he took appropriate action to report the matter to the police, the police did not raise their little finger. This obliged him to go before the learned Magistrate to make a complaint. That complaint has been referred by the learned Magistrate to the police under Sec.156(3) of the Cr.P.C. Thereafter, a crime has been registered by the police. Investigation is in progress. The petitioners apprehend imminent arrest.

2. The learned counsel for the petitioners submits that the petitioners are absolutely innocent. Except that the telephone numbers of the petitioners happened to be noted on the cover received by the de facto complaint enclosing the forged document, there is no better material against the petitioners, it is submitted. Secondly, it is contended, that at any rate, their arrest and incarceration is not necessary. The petitioners shall

co-operate with the Investigator. They may be granted anticipatory bail, submits the learned counsel for the petitioners.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that the indications galore to suggest that the petitioners are actively involved in making and using of the forged document. The available indications must unmistakably suggest the involvement of the petitioners. More thorough, detailed and exhaustive investigation has to be conducted. The petitioners have to be interrogated. There is absolutely no necessity to permit the petitioners to arm themselves with an order of anticipatory bail at this stage, contends the learned Public Prosecutor.

4. I have considered all the relevant inputs. At my request the Case Diary was placed before me for my perusal. I have perused the same.

5. Having considered all the relevant inputs, I must say, I am unable to perceive any features in this case which would justify or warrant the invocation of the extraordinary equitable discretion under Sec.438 of the Cr.P.C. This, I agree with the learned Public Prosecutor, is a fit case where the petitioners must appear before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail in the

ordinary course.

6. In the result, this bail application is dismissed; but with the observation that if the petitioners surrender before the Investigating Officer or the learned Magistrate and seek bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge